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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA,)	2:09-CR-078-JCM-(RJJ)
)	2:10-CR-520-JCM-(RJJ)
11 Plaintiff,)	
)	GOVERNMENT'S RESPONSE TO
12 vs.)	DEFENDANT'S MOTION TO
)	DISMISS DUE TO SPEEDY TRIAL
13 SHAWN RICE,)	ACT VIOLATION - CR # 258
)	
14 <u>Defendant.</u>)	

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16 COMES NOW the United States of America, by and through DANIEL G.
17 BOGDEN, United States Attorney, and J. Gregory Damm and Nicholas D. Dickinson,
18 Assistant United States Attorneys and hereby submits GOVERNMENT'S RESPONSE
19 TO DEFENDANT'S MOTION TO DISMISS DUE TO SPEEDY TRIAL ACT
20 VIOLATION - CR # 258.

21 On March 3, 2009, defendant Rice was indicted and charged with one count of
22 conspiracy to commit money laundering pursuant to 18 U.S.C. § 1956 (h), thirteen
23 counts of money laundering pursuant to 18 U.S.C. § 1956(a)(3)(A), and aiding and
24 abetting. On October 19, 2010, defendant Rice was indicted and charged with three
25 counts of failure to appear in violation of 18 U.S.C. § 3146(a)(1). Defendant Rice was
26 a fugitive from justice from March 8, 2010, until his arrest in Arizona on December 22,
2011, a total of 654 days.

1 Defendant Rice contends that he was denied his right to a speedy trial under the
2 provisions of 18 U.S.C. § 3161. In his procedural background, defendant Rice refers
3 to the indictment in case # 2:09-CR-078-JCM-(RJJ) as his “first and only indictment”
4 and he neglects to mention the subsequent failure to appear indictment in case # 2:10-
5 CR-520-JCM-(RJJ). Defendant Rice appears to only raise his speedy trial argument
6 in his first case 2:09-CR-078-JCM-(RJJ). Defendant Rice claims that the speedy trial
7 clock began to run on March 6, 2009, the date of his initial appearance in the first case
8 (money laundering).

9 Defendant Rice appears to have ignored the provisions of 18 U.S.C. §
10 3161(k)(1) which provides as follows:

11 If the defendant is absent (as defined by subsection (h)(3)) on the day set
12 for trial, and the defendant's subsequent appearance before the court on
13 a bench warrant or other process or surrender to the court occurs more
14 than 21 days after the day set for trial, the defendant shall be deemed to
have first appeared before a judicial officer of the court in which the
information or indictment is pending within the meaning of subsection (c)
on the date of the defendant's subsequent appearance before the court.

15 The trial for the defendant shall commence 70 days after the latter: (1) the filing
16 date, or (2) the date that the defendant has appeared before the judicial officer in which
17 the charge is pending. 18 U.S.C. § 3161(c)(1). Because the defendant was gone for a
18 period of more than 21 days, § 3161(k)(1) requires that the speedy trial clock be reset
19 to zero. *See, United States v. Serrano*, 197 F. App'x 906, 908–09 (11th Cir.2006)
20 (unpublished) ("when the defendant is absent or unavailable at the date of his trial and
21 does not appear before the court within 21 days, § 3161(k)(1) resets the speedy trial
22 clock"); *United States v. Holloway*, 43 F.3d 712 (Table), 1 (D.C.Cir.1994)
23 (unpublished) (defendant was absent in excess of 21 days; thus, the Speedy Trial Act
24 clock was reset); *United States v. Robinson*, 991 F.2d 792 (Table), 2 (4th Cir.1993)
25 (unpublished) ("speedy trial clock began anew under 18 U.S.C. § 3161(k)(1)" after
26 defendant failed to appear and was absent for more than 21 days); *United States v.*
Greco, 1994 WL 163923 (S.D.N.Y.1994) (18 U.S.C. § 3161(k)(1) reset the speedy trial

1 clock to zero after defendant failed to appear for trial and was absent for longer than
2 21 days). Further, because the defendant did not first appear where the charge was
3 pending, the speedy trial clock did not commence to run until defendant Rice was
4 returned to the district of Nevada. *See United States v. Thirion*, 813 F.2d 146, 153 (8th
5 Cir.1987) (speedy trial clock does not start until first appearance in district where
6 charge is pending, even though defendant in federal custody prior to that time). Since
7 defendant Rice made his first appearance in the district of his arrest (Arizona), his
8 speedy trial clock was not restarted under the Speedy Trial Act until his subsequent
9 appearance in the charging district (Nevada) on January 19, 2012. CR # 220 in 2:09-
10 CR-078-JCM-(RJJ).

11 On February 16, 2012, defendant Rice filed a Stipulation to Continue Trial. CR
12 # 220. On February 20, 2012, this Court filed an Order to Continue Trial (CR # 230)
13 which provided that time under the speedy trial clock was excluded from 3/13/12 until
14 7/23/12. A similar order was entered in the failure to appear case (2:10-CR-520-JCM-
15 (RJJ)) which excluded time under the speedy trial clock from 3/13/12 until 8/7/12. The
16 two cases were consolidated on June 4, 2012. CR # 23 in 2:10-CR-520-JCM-(RJJ).

17 Under either case, 2:09-CR-078-JCM-(RJJ) or 2:10-CR-520-JCM-(RJJ), the
18 defendant's right to a speedy trial within 70-days has not yet run. At most, 54-days
19 have run from 1/19/2012 (initial appearance) to 3/13/2012 (first trial setting). The

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1 defendant stipulated to a continuance in the first case until 7/23/2012 and until
2 8/7/2012 in the second case (failure to appear). The defendant's motion to dismiss for
3 an alleged violation of the speedy trial act should be denied.

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5 DATED this 16th day of July, 2012.

6 Respectfully submitted,

7 DANIEL G. BOGDEN
8 United States Attorney

9 /s/ J. Gregory Damm

10 J. GREGORY DAMM
11 Assistant United States Attorney

12 /s/ Nicholas D. Dickinson

13 NICHOLAS D. DICKINSON
14 Assistant United States Attorney

Certificate of Service

I, Pamela Mrenak, hereby certify that I am an employee of the United States Department of Justice, and that on this day I served a copy of the following: GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS DUE TO SPEEDY TRIAL ACT VIOLATION - CR # 258, upon counsel for all defendants appearing in this matter via the CM/ECF system, by electronically filing said GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS DUE TO SPEEDY TRIAL ACT VIOLATION - CR # 258 and mailing a copy postage prepaid to Shawn Talbot Rice, P.O. Box 1092, Seligman, Arizona 86337-1092 and to Shawn Talbot Rice, Inmate # 43739-048, Nevada Southern Detention Center, 2190 E. Mesquite Ave., Pahrump, NV 89060-3427.

Dated: July 16, 2012

/s/ Pamela J. Mrenak
Legal Assistant to J. Gregory Damm
Assistant United States Attorney
District of Nevada